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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 RAJ KUMAR,

11 Plaintiff,

12 v.

13 CONVENIENCE RETAILERS,
14 LLC, et al.,

15 Defendants.

CASE NO. C16-0364JLR

ORDER EXCLUDING
DEFENDANT'S PROPOSED
EXHIBITS 516 AND 517

16 Before the court is the parties' dispute over the admissibility of Defendant
17 Convenience Retailers, LLC d/b/a My Goods Market's ("MGM") proposed exhibits 516
18 and 517.¹ (See Def. Letter (Dkt. # 40); Pl. Letter (Dkt. # 39).) Exhibits 516 and 517 are

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20 ¹ Plaintiff Raj Kumar indicates that the exhibits in question are 517 and 518. (See Pl.
21 Letter (Dkt. # 39) at 1 n.1.) However, both the pretrial order filed by both parties and MGM's
22 submission to this court refers to exhibits 516 and 517 as the disputed exhibits. (See Pretrial
Order (Dkt. # 30) at 8; Def. Letter (Dkt. # 40) at 1.) Regardless of the labels, both parties seem
to be discussing the same exhibits: the email chains that discuss Mr. Kumar's employment.
(Compare Def. Letter, with Pl. Letter.) Thus, the court refers to the email correspondence
regarding "Raj Kumar Team Member" as exhibits 516 and 517.

1 both copies of email correspondence between Mr. Raj Prasad, the MGM store manager,
2 and Ms. Deb Denker, the MGM HR correspondent, about Plaintiff Raj Kumar's
3 employment at MGM. (*See* Def. Letter, Attachments A-B.) Two handwritten notes by
4 Mr. Kumar are attached to the emails. (*See id.*)

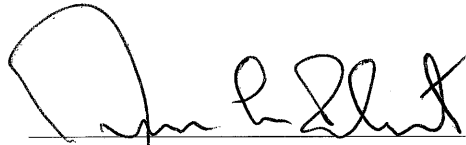
5 At bottom, Mr. Kumar urges the court to exclude these exhibits because they were
6 not disclosed until October 12, 2017, "several months after the discovery cut-off, days
7 after the deadline to file motions in limine, and less than a month before trial was
8 scheduled to begin." (Pl. Letter at 1.) MGM does not dispute that these exhibits were
9 untimely disclosed; indeed, it concedes that the exhibits were "inadvertently not produced
10 during discovery as a result of internal misfiling at MGM." (Def. Letter at 1 n.2.)
11 However, MGM insists that the late disclosure does not prejudice Mr. Kumar because the
12 emails largely contain information that was previously provided or already known to Mr.
13 Kumar. (*Id.* at 1-2.)

14 On October 27, 2017, the court excluded potential witnesses that Mr. Kumar
15 inadvertently left off of the witness disclosure list and thus did not disclose until
16 September 27, 2017. (10/27/2017 Order (Dkt. # 32) at 2; Resp. to Defs. Mot. in Limine
17 (Dkt. # 27) at 4.) The court stated that because "[d]iscovery is now closed, and [MGM
18 has] no opportunity to question these witnesses or otherwise prepare to meet their
19 testimony," the late disclosure "is neither substantially justified nor harmless."
20 (10/27/2017 Order at 2.)

21 The same is true for these exhibits, which were not disclosed until October 12,
22 2017. (*See* Pl. Letter at 1.) By the time Mr. Kumar was aware of these specific emails,

1 discovery had closed, and Mr. Kumar had no opportunity to depose the authors of the
2 emails, conduct additional discovery related to the emails, or otherwise prepare for
3 testimony about the emails. (*See id.* at 1-2; Sched. Order.) Thus, as was the case with
4 the undisclosed witnesses, the failure to disclose these exhibits “is neither substantially
5 justified nor harmless.” (*See* 10/27/2017 Order at 2.) Accordingly, the court
6 EXCLUDES exhibits 516 and 517 from introduction at trial.

7 Dated this ²⁰2 day of November, 2017.

8 
9 JAMES L. ROBART
United States District Judge